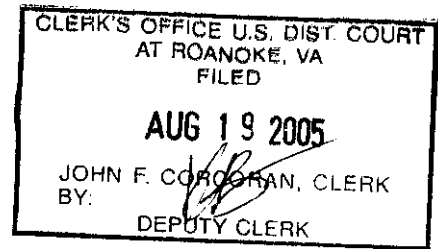


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



RUSSELL DON HARVEY,

Petitioner,

v.

GENE JOHNSON,

Respondent.

Case No. 7:05CV00238

ORDER

By: Glen E. Conrad
United States District Judge

Russell Don Harvey, a Virginia inmate proceeding pro se, filed this action as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. By order entered July 8, 2005, the case was referred to United States Magistrate Judge Michael F. Urbanski for appropriate proceedings pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has now submitted a report in which he recommends that the motion to dismiss filed by the respondent be granted. Both sides were advised that failure to file written objections to the report within 10 days would be deemed to constitute a waiver of the right to contest the Magistrate Judge's findings and conclusions. Neither side has filed any objection to the Report and Recommendation.

For reasons stated in the Magistrate Judge's Report and Recommendation, and in the absence of any objections thereto, it is now

ORDERED

that the Report and Recommendation shall be, and it hereby is adopted in its entirety. Wells v. Shriners Hospital, 109 F.3d 198, 199 (4th Cir. 1997) (failure to file written objections to report and recommendation constitutes a waiver of the right to further contest those issues); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985) (pro se litigant must be advised of the effect of failure to

file written objections to report and recommendation in order for the report to be binding on the litigant).

Accordingly, it is further

ORDERED

that the respondent's motion to dismiss shall be granted, and the case shall be stricken from the active docket of the court. The Clerk is directed to send certified copies of this order to the plaintiff and all counsel of record.

ENTER: This 19th day of August, 2005.



United States District Judge